IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.1778/07

Satya Narain **Versus** State

DATE OF ORDER :: 23/10/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Rakesh Kumar, for petitioner
Mr. Arun Sharma, Public Prosecutor for State

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Instant petition has been filed assailing the order dt.28th February, 2007 whereby application filed u/s.70(2) Cr.P.C. for conversion of warrant from non-bailable to bailable was rejected by learned trial Judge.

Complainant lodged a written report on 22nd February, 1994 on which Police registered FIR No.43/94 for offence u/ss.148, 149, 452, 352, 323, 120B IPC and Sections 3/25 & 4/25 of Arms Act was also added. The accused-petitioner was arrested on 22nd February, 1994 and was released on bail on 23rd February, 1994. His bail bonds were forfeited because of his non-appearance on 1st October, 1996 and after investigation challan was filed by the Investigating Officer on 28th June, 1998. It has also come on record that case was transferred in various courts during pendency and bail bonds of other co-accused were forfeited. Arrest warrant was issued, but on their application u/s.70(2) Cr.P.C., learned

trial Judge vide order dated 3rd May, 2005 considered their request and converted warrant from non-bailable to bailable on furnishing security of Rs.5,000/-.

Counsel for petitioner submits that he is too similarly situated, but learned trial Judge has not considered the request of conversion of warrant from non-bailable to bailable and in such circumstances rejecting his application u/s.70(2) Cr.P.C. requires interference by this court.

Learned Public Prosecutor while supporting the order submits that bail bonds of present petitioner were forfeited on 1st October, 1996 and for sufficient long time his presence could not be ensured. In such circumstances, no error has been committed by learned trial Judge for ensuring his presence.

It is true that after bail bonds were forfeited, the accused was expected to appear so that there could not be any delay in trial, but at the same time, this fact could not be ruled out that other co-accused who too are similarly situated like present accused-petitioner, but their application u/s.70(2) Cr.P.C. on the same premise was accepted by learned trial Judge. Certainly, the present accused-petitioner is also required to have parity atleast in such like matters and court in the facts of instant case

considers appropriate to convert the warrant from non-bailable to bailable and the order dated 28th February, 2007 is not legally sustainable and the same deserves to be set aside.

Consequently, the misc. petition stands allowed and the order dated 28th February, 2007 is hereby quashed and set aside.

Counsel for petitioner is directed to ask the petitioner to appear and ensure his presence before learned trial Judge on 19th November, 2007 and the learned trial Judge may take necessary bail bonds to ensure his presence and expedite the trial and if petitioner fails to appear on the said date, learned trial Judge will be free to pass necessary orders for ensuring his presence in accordance with law.

[AJAY RASTOGI],J.